IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2006

CORAM:

THE HON'BLE MR.JUSTICE F.M. IBRAHIM KALIFULLA

C.R.P. (PD) No.574 of 2006

Karnataka Bank Limited
A Company registered under
the provisions of the Indian
Companies Act, 1913 carrying
on business of banking and
having its registered office
at Mahaveer Circle, Kankanady
Mangalore - 575 002 and several
Branches throughout India and its
Triplicane Branch at No.132-A
Triplicane High Road, Chennai-5
rep. by its Branch Manager,
Mr.K.S.Janardhana .. Petitioner/Plaintiff

Vs.

1. Abdul Hussain

2. D.Hussain

3. D.Razia Begum .. Respondents/Defendants

Petition under Article 227 of the Constitution of India against the return of the plaint in O.S.Sr.No.10975 of 2004 by the learned Subordinate Judge, Poonamallee.

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For Petitioner : Mr.S.R.Rajagopal
Mr.S.Senthilnathan
Addl. Government Pleader (CS)
assisted the Court

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O R D E R

The petitioner is aggrieved inasmuch as the Court below declined to number the suit filed by the petitioner and returned the same directing the petitioner to comply with payment of stamp duty penalty in respect of Document No.1, which is a memorandum of deposit of title deeds, which according to the Court below requires such payment by virtue of Article 6 (2)(a) of the Indian Stamp Act.

2. When the revision came for admission on 17.4.2006, notice was ordered to be served on the Additional Government Pleader (Civil Side) to assist the Court.

3. Today, when the revision was taken up for hearing, the learned Additional Government Pleader (Civil Side) pointed out that the very Explanation to Article 6(2)(a) and (b) of the Indian Stamp Act came to be added by Act 31 of 2004, published in the Tamil Nadu Government Gazette Extraordinary Part-IV, Section 2, dated 25.11.2004, which came into effect on 16.12.2004. The explanation reads as under:

> "Explanation.- For the purpose of this Article, notwithstanding anything contained in any judgment, decree or order of any court or order of any authority, any letter, note, memorandum or writing relating to the deposit of title deeds whether written or made either before or at the time when or after the deposit of title deeds is effected, and if it is in respect of the security for any loan, such letter, note, memorandum or writing shall be deemed to be an instrument evidencing an agreement relating to the deposit of title deeds."

4. In fact, there is a decision of the Hon'ble Chief Justice, M.N.Chandurkar, reported in 100 Law Weekly 4 in Nanjappa, H.G. v. M.F.C. Industries (P) Ltd., wherein, the learned Judge has held that memorandum accompanying a list of title deeds deposited under an equitable mortgage did not require registration and is admissible in evidence.

5. Apparently, the Explanation came to be added to the said Article in the light of the ratio laid down in the said decision. In any case, the Document No.1, which is a memorandum of deposit of title deeds, is dated 11.11.2000. Therefore, even applying Article 6(2)(a) of the Indian Stamp Act, having regard to the addition of Explanation with effect from 16.12.2004, there was no scope to hold that the same would attract levy of stamp duty penalty to the present Document No.1, inasmuch as the said document came into existence long prior to the inclusion of the Explanation to Article 6(2)(a) of the Act.

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6. Therefore, having regard to the decision reported in 100 Law Weekly 4, referred to above, as well as the Explanation added to Article 6(2)(a) of the Act, the return of the plaint on that ground cannot be sustained. The revision petition, therefore, stands allowed. The petitioner shall be permitted to re-present the plaint within one week from the date of receipt of copy of this order. The Court below is directed to number the plaint if the same is otherwise in order. No costs.

The assistance rendered by the learned Additional Government Pleader (Civil Side) is appreciated.

sasi

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To:

The Subordinate Judge
Poonamallee.

+ 1 CC To M/S.Rajagopal., Advocate, SR NO.19276.
+ 1 CC To The Additional Government Pleader (C.S), Advocate, SR NO.19522.

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MF(CO)
RVL 24.04.2006

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